

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0266
Indiana Corporate Income Tax
For the Years 2002, 2003, and 2004**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Ten-Percent Penalty.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(4); IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c); 45 IAC 15-11-2(d).

Taxpayer asks that the ten-percent penalty be abated.

II. Ten Percent Penalty Assessed for Underpayment of the Taxpayer's Quarterly Estimated Tax.

Authority: IC § 6-3-4-4.1(e); IC § 6-8.1-10-2.1(b).

Taxpayer asks that the penalty assessed for late payment of taxes be abated.

III. Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-1(a); IC § 6-8.1-10-1(b); IC § 6-8.1-10-1(b)(3); IC § 6-8.1-10-1(e); Income Tax Information Bulletin # 64 (December 2006).

Taxpayer asks the Department to abate the interest charged on its income tax liabilities for the years at issue.

STATEMENT OF FACTS

During Indiana's 2005 amnesty program, taxpayer entered into a Settlement Agreement resolving protested issues stemming from a 1999 through 2001 audit. The Department of Revenue (Department) agreed that it would not assess additional taxes for 1999 through 2001. The Department agreed to waive penalty and interest charges attributable to the 1999 through 2001 liability. In addition, taxpayer agreed that it would "file a combined adjusted gross income return with [related company] for all tax years after the last tax year of the Settlement Agreement."

Taxpayer thereafter filed amended returns for 2002, 2003, 2004 and paid the additional tax liability. The Department assessed penalties and interest on the amount of 2002, 2003, and 2004 taxes.

Believing that the penalties were unwarranted and that interest charges should be abated, taxpayer submitted a protest. An administrative hearing was held during which taxpayer's representative explained the basis for its protest, and this Letter of Findings results.

I. Ten-Percent Negligence/Late Penalty.

DISCUSSION

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(4) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Under IC § 6-8.1-5-1(b), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the negligence penalty – is presumptively valid.

As a threshold issue, it should be noted that the Settlement Agreement at issue does not resolve the issue. Although both parties agreed that the 1999 through 2001 penalties should be waived, the Agreement is silent as to penalties which could potentially attach to the filing of the 2002, 2003, and 2004 combined returns. Nonetheless, the Department recognizes that the 2002 through 2004 combined returns were filed pursuant to and in recognition of the Agreement. The Department also recognizes that if taxpayer had failed to submit the 2002 through 2004 combined returns, taxpayer would have been in breach of that Agreement. In filing the 2002 through 2004 returns and in paying the consequent tax liability, taxpayer "exercised ordinary

business care and prudence.” The penalty assessed pursuant to IC § 6-8.1-10-2.1 should be abated.

FINDING

Taxpayer’s protest is sustained.

II. Ten-Percent Underpayment Penalty.

DISCUSSION

Distinguished from the first issue concerning the IC § 6-8.1-10-2.1 penalty, is the protest the taxpayer sets forth regarding the penalty assessed for the underpayment of 2002 through 2004 taxes. Taxpayer incorporates the arguments it set out in favor of the abatement of the IC § 6-8.1-10-2.1 penalty believing that the underpayment penalty was unjustified.

Under IC § 6-3-4-4.1(e), a penalty is imposed for the underpayment of estimated tax and incorporates by reference the ten-percent negligence statute under IC § 6-8.1-10-2.1(b). Again – and for the reasons set forth in Part I above – the Department agrees that any penalty assessed pursuant to IC § 6-3-4-4.1(e) should be abated.

FINDING

Taxpayer’s protest is sustained.

III. Interest Assessment – Corporate Income Tax.

DISCUSSION

Taxpayer maintains that the amount of interest attributable to the amended 2002 through 2004 returns should be abated.

IC § 6-8.1-10-1 imposes interest when a taxpayer has not paid the proper amount of taxes due. IC § 6-8.1-10-1(a) provides that, "If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment."

The statute also establishes the amount against which interest is calculated. IC § 6-8.1-10-1(b) states that, "The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c), from the due date for payment. The interest applies to: (1) the full amount of the unpaid tax due if the person failed to file the return; (2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return; or (3) the amount of the deficiency."

Income Tax Information Bulletin # 64 (December 2006) reflects the Department's understanding of IC § 6-8.1-10-1.

If a taxpayer fails to file a return, fails to pay the full amount of tax, or files a late return with tax due, the taxpayer is subject to interest (and possible penalty) on any outstanding balance of tax due after the due date of the return under IC § 6-8.1-10-1. The interest on nonpayment of tax accrues at the rate established by the Commissioner from the due date until the date on which full payment of the tax is received. *See also* Income Tax Information Bulletin # 64 (January 2003).

IC § 6-8.1-10-1 provides no leeway whatsoever on the question of whether or not to impose interest against a tax deficiency or on the question of when that interest begins to accrue. The statutory language and does not vest in the Department any discretion regarding whether or not to impose the interest charge. "If a person . . . incurs a deficiency upon a determination by the department, *the person is subject to interest* on the nonpayment." IC § 6-8.1-10-1(a) (*Emphasis added*). The assessment of interest is statutory, the issue of interest attributable to the 2002 through 2004 returns was not addressed within the Settlement Agreement, and the Department – unlike the penalties addressed above – has no discretion in the matter. *See* IC § 6-8.1-10-1(e).

FINDING

Taxpayer's protest is respectfully denied.

DK/DP/BK – January 4, 2007.